



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Revision Petition No.195/2008

Shri Monoranjan Pathak
Son of Late Sudhir Chandra Pathak,
R/o.Maligaon Chariali,, Guwahati;
District – Kamrup (M), Assam,

.....Petitioner

-Versus-

The State of Assam,
Represented by P.P. Assam;

.....Respondent

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner : Mr. R. Sarma,

For the respondent : Mr. R.J. Baruah,

Dates of Hearing : 14.03.2024.

Date of Judgment : 25.04.2024.

JUDGMENT AND ORDER

Heard Mr. R. Sharma, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Addl. P.P. for the State Respondents.

2. In this revision petition, under Section 401, read with Section 397 Cr.P.C., the petitioner, namely, Shri Monoranjan Pathak, has put to challenge the judgment and order, dated 29.03.2008, passed by the learned Addl. Sessions Judge (FTC) No.4, Kamrup (M), Guwahati in Criminal Appeal No.39/2006. It is to be noted here that vide impugned judgment and order, dated 29.03.2008, the learned Addl. Sessions Judge (FTC) No.4, Kamrup (M), Guwahati, has affirmed the judgment and order, dated 31.05.2006, passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in Case No.3508^C/1999. It is also to be noted here that vide judgment and order, dated 31.05.2006, the learned Chief Judicial Magistrate, Kamrup, Guwahati, has convicted the petitioner under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 and sentenced him to suffer rigorous imprisonment for 6 months and also to pay a fine of Rs.1000/- (Rupees One Thousand), in default, to suffer rigorous imprisonment for a period of two months.

3. The background facts, leading to filing of this revision petition, are briefly stated as under:-

“The petitioner was running a bakery in the name and style of M/S A.B. Bakery at Maligaon Chariali. On 15.07.1999, one Naren Ingti had lodged a complaint against the Bakery of the petitioner before the Addl. Deputy Commissioner, Kamrup that

on 14.07.1999 he had purchased one Bread from the Bakery of the petitioner and he had detected probable extract of a mouse. Thereafter, on 15.07.1999, Food Inspector- T.K. Barman being accompanied by one Hiren Kalita visited his Bakery and collected three packets of Bread weighing 400 gms as sample for examination after serving Notice to the petitioner in Form No. IV, and after observing all the formalities under Prevention of Food Adulteration Act and under the Rules made there under, in presence of witness Hiren Kalita and Naren Ingti. Thereafter, the Food Inspector had sent one part of the sample to the Public Analyst to the Govt. of Assam for examination. After examination of the sample, the Public Analyst submitted the report to the Local Health Authority to the effect that the sample is misbranded as per Section 2 (ix) (k) of the Prevention of Food Adulteration Act, 1954 read with Rule 32(c) of the Prevention of Food Adulteration Rules. Thereafter, having obtained necessary sanction, to prosecute the petitioner, under section 7/16 of the Prevention of Food Adulteration Act, the Food Inspector had lodged a Complaint, being Complaint Case No. 3508^C/1999, against the petitioner to stand trial under the aforesaid sections of law, before the court of learned Chief Judicial Magistrate, Kamrup.

Upon the said complaint the learned Chief Judicial Magistrate, Kamrup, Guwahati had taken cognizance and issued process to the petitioner to appear before it and to stand trial under Sections 16 read with Section 7 of the

Prevention of Food Adulteration Act. Accordingly, the petitioner appeared before the Court below and the learned Court below, then, explained the particular of offence under Sections 16 read with Section 7 of the Prevention of Food Adulteration Act, to the petitioner, to which the petitioner had pleaded not guilty and claimed to be tried. Thereafter, the learned trial Court had examined the prosecution witnesses and after closing the evidence, the learned trial court had also examined the petitioner under Section 313 Cr.P.C. Thereafter, the learned trial Court had examined the witnesses of the petitioner, and thereafter, hearing arguments of learned Advocates of both sides, convicted the petitioner under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act and sentenced him as aforesaid.

Being aggrieved, the petitioner had preferred an appeal before the Court of the learned Addl. Sessions Judge (FTC) No.4, Kamrup, Guwahati and the learned Additional Sessions Judge, Kamrup, Guwahati after hearing the learned Advocates for both sides, dismissed the appeal vide impugned judgment and order, dated 29.03.2008, in Criminal Appeal No.39/2006 and affirmed the judgment and order, dated 31.05.2006, passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in Complaint Case No. 3508^C/1999.”

- 4.** Being highly aggrieved, the petitioner approached this Court by filing the present revision petition and contended to allow the petition on the grounds that –

- (i) The prosecution side could not prove the ingredients of the offence under section 16(1)(a)(i) of the Prevention of Food Adulteration Act against the petitioner beyond all reasonable doubt and as such conviction and sentence under the said section cannot sustain;
- (ii) The Complainant namely, T.K. Barman had not made any attempt to collect independent witness and he did not mention the name of the persons when he had approached at the time of taking sample and thereby violated provision of section 10(7) of the Act;
- (iii) There is material contradiction in respect of date of taking sample in the Inspection Note and in the evidence of the Food Inspector which violates Rule 9 of the Act;
- (iv) The prosecution side had neither examined the person who had analysed the sample and who had submitted the report of analysis;
- (v) Shri Naren Ingti, who lodged the complaint on personnel grudge, cannot be an independent witness herein this case and as such his evidence ought not have been relied upon to convict the petitioner;
- (vi) The provision of section 13(2) has not been complied with, as the report of Public Analyst was not served upon the petitioner;
- (vii) The sanction under section 20 of the Act, to prosecute the petitioner was not valid in as much as no material was

produced to show that the sanctioning authority had applied his mind;

- (viii) The learned court below had failed to comply with the provision of section 17 of the Act;
- (ix) Misbranding of the sample is not established herein this case against the petitioner and that prosecution side had failed to establish the offence against the Firm and against the other partner of the Firm;

5. Mr. R. Sarma, the learned counsel for the petitioner, besides reiterating the points mentioned above, mainly stressed upon the following points for consideration of this court:-

- (i) There was no independent witness of taking samples of bread from the Bakery of the petitioner, which is fatal to the prosecution case. In support of his submission, Mr. Sarma has referred one case law- **Dwarika Prasad vs. State of Assam** reported in **(2011) 4 NFJ 427**;
- (ii) The Public Analyst, who had examined the sample, and submitted the report, has not been examined;
- (iii) The kind of misbrand was not clearly indicated in the report;
- (iv) There is also contradiction in the version of witnesses from where the sample was collected, while some stated that it was collected from the factory (*karkhana*), whereas some stated that it was collected from the sale counter;
- (v) The notice under section 13(2) has not been served upon the petitioner and no A/D card was returned and this lapse is fatal

to the prosecution case. Mr. Sarma has referred following case laws in support of his submission:-

- (a) **Rameswar Dayal vs. State of U.P.** reported in **1995 Supp (4) SCC 659,**
 - (b) **State of Orissa vs. Gauranga Sahu** reported in **2003 CRI.L.J. 3077;**
 - (c) **Sibanath Singh vs. State of Assam** reported in **2001 (2) GLT 501;**
 - (d) **Mahesh Agarwalla vs. State of Assam** reported in **2012 (2) GLT 142;**
- (vi) Mr. Sarma further submits that the petitioner is now 60 years old, and he has been suffering from ailment of heart and pacemaker was implanted on his person and therefore, Mr. Sarma has contended to allow the petition. Alternatively, Mr. Sarma also submits that instead of substantive sentence the amount of fine may be enhanced considering the present health condition of the petitioner.

6. Whereas, Mr. R.J. Baruah, the learned Addl.P.P. submits that the impugned judgments and orders suffers from no infirmity or illegality requiring interference of this court. Mr. Baruah submits that there is concurrent finding of two learned courts below and no exceptional circumstance has been shown by the petitioner to invoke the revisional jurisdiction of this court. Mr. Baruah also submits that though the petitioner has taken a stand that he has not received the notice under section 13(2) of the PFA Act, yet in his examination under section 313 Cr.P.C. the petitioner had admitted having notice u/s 13(2) PFA Act and the said fact stands established

from the evidence of P.W.1 also leaving no room for doubt about receiving of notice by the petitioner. Mr. Baruah also submits that nothing was mentioned in the samples of Bread collected by the Food Inspector from the shop of the petitioner and it is a clear case of misbranding and therefore, Mr. Baruah has contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and the impugned judgments and order of the learned Courts below and also carefully gone through the case laws referred by Mr. Sarma, the learned counsel for the petitioner.

8. It is not in dispute that on 15.07.1999, Food Inspector T.K. Barman, visited M/S A.B. Bakery situated at Maligaon Chariali, belonging to the petitioner and took sample of Bread by purchasing three packets of Bread weighing 400 grams each, for examination, after serving Notice to the petitioner in Form No. IV, and after observing all the formalities, as required to be observed, under the Prevention of Food Adulteration Act and also under the Rules made thereunder. It also appears from the record of the learned court below that the complainant Food Inspector had called several persons to become witness of taking sample, but he could not succeed and only then he had requested the other Food Inspector namely, Shri Hiren Kalita, who had accompanied him to become witness and on being agreed upon he had completed the process of collecting sample.

9. Since there is evidence on the record of the learned court below that the Food Inspector had made an attempt to call independent witnesses, but, he could not succeed as none agreed upon to become witness of taking sample. It cannot be said that the Complainant Food Inspector had not complied with the provision of section 10(7) of the PFA Act. That being so, the submission of Mr. Sarma, the learned counsel for the petitioner, is found to be devoid of substance. And as such, the ratio laid down in the case of **Dwarika Prasad** (supra), so referred by him in support of his submission, would not come into his aid. It is to be noted here that in the case of **Dwarika Prasad** (supra), the requirement of calling independent witnesses has been emphasized.

10. It also appears that the complainant Food Inspector had sent one part of the sample to the Public Analyst to the Govt. of Assam for examination and on examination of the sample, the Public Analyst had submitted the report to the Local Health Authority to the effect that the sample is misbranded as per Section 2 (ix) (k) of the Prevention of Food Adulteration Act, 1954 read with Rule 32(c) of the Prevention of Food Adulteration Rules.

11. It is to be noted here that section 2(ix) of the Prevention of Food Adulteration Act, 1954 defined "misbranded" as under:-

(ix) "misbranded"— an article of food shall be deemed to be misbranded—

- (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;
- (b) if it is falsely stated to be the product of any place or country;

- (c) if it is sold by a name which belongs to another article of food;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is; (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents; 5
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made there under;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made there under;**

12. Rule 32 of the Prevention of Food Adulteration Rules before substitution in the year 2008, provides as under:-

"32. Package of food to carry a label :- Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label :-

- (a) the name, trade name or description of food contained in the package;

- (b) the names of ingredients used in the product in descending order of their composition by weight or volume as the case may be;

Substituted by G.S.R. 664 (E), dated 19th September, 2008, for paragraph (2) (w.e.f. 19-3-2009). Paragraph (2), before substitution, stood as under:

"(2) List of Ingredients- A list of ingredients shall be declared on the label and shall be in the following manner:

- (i) the list of ingredients shall contain an appropriate title, such as the term "ingredients";
- (ii) the names of ingredients used in the product shall be mentioned in descending order in respect of their composition, by weight or volume, as the case may be;
- (iii) every package of food sold as a mixture or combination shall disclose the ingoing percentage, by weight or volume as may be appropriate, of any ingredient at the time of the manufacture of the food (including compound ingredients or categories of ingredients) and if such ingredient, -
 - (A) is emphasized as present on the label through words or pictures or graphics; or
 - (B) is essential to characterize the food in order to distinguish the food from other categories of food with which it may be confused; or
 - (C) is emphasized as ingredients in the name of the food; or

....."

13. In the case in hand the report of the Public Analyst (Exhibit - 6) indicates that there was no name and address of the manufacturer, in sealed packet of bread, so collected by the Complainant Food Inspector from M/S A.B. Bakery of the petitioner. Besides, it appears from the record that there was also absence of ingredients in the name of the food. And as such, there remains no

doubt that the sample of bread, so collected by the Food Inspector is misbranded under section 2(ix) (k) of the Prevention of Food Adulteration Act, 1954 and Rule 32(c) of the Prevention of Food Adulteration Rules, 1955.

14. Thereafter, having obtained necessary sanction, to prosecute the petitioner, under section 7/16 of the Prevention of Food Adulteration Act, the complainant Food Inspector had lodged the Complaint Case No. 3508^C/1999, against the petitioner before the court of learned Chief Judicial Magistrate, Kamrup.

15. Further, it appears that having received the report of Public Analyst, the Local Health Authority, Kamrup, Guwahati, had sent a copy of the said report to the petitioner as per provision of section 13(2) of the PFA Act. Though Mr. Sarma, the learned counsel for the petitioner, has taken a stand that the petitioner had not received the report and no A/D card returned to establish the receipt of the report thereof and referring to several case laws, submits that it is mandatory to serve a copy of the report of Public Analyst to the accused and non-compliance thereof is fatal, yet, it appears from the record, specially from the statement of the petitioner, recorded under section 313 Cr.P.C. that the petitioner had received the copy of the report of the Public Analyst. The petitioner, in no uncertain terms had admitted the same. Mr. R.J. Baruah, the learned Addl. P.P. has rightly pointed this out in his argument. The learned court below also elaborately discussed this point and it appears that the learned court below had rightly arrived at the finding that the report of Public Analyst, under section 13(2) of the PFA Act was duly received by the petitioner and the same is based upon clear and

cogent materials on record and also from the evidence of the Complainant Food Inspector (P.W.1) that vide forwarding letter (Exhibit-12) the report of Public Analyst was sent to the petitioner by the Local Health Authority, by registered post, (Exhibit-13, 14 and 15 the postal receipt thereof) in proper address, in compliance of Section 27 of the General Clauses Act.

16. I have carefully gone through the case laws, so referred by Mr. Sarma, the learned counsel for the petitioner. There is no quarrel at the Bar about the proposition of law, laid down in the cases referred by Mr. Sharma. But, in view of admission made by the petitioner, in his examination u/s 313 Cr.P.C., this court is of the view that the ratios, laid down in the said cases, would not advance the case of the petitioner.

17. The record of the learned court below also reveals that upon the complaint, the learned trial court had taken cognizance of the offence and issued process to the petitioner and on his appearance explained the particulars of offence under Sections 16 read with Section 7 of the Prevention of Food Adulteration Act, to him, to which he had pleaded not guilty and claimed to be tried. Thereafter, taking evidence of both sides and examining the petitioner under section 313 Cr.P.C. and after hearing argument of learned Advocates of both sides, found the offence under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act well established against the petitioner and sentenced him accordingly.

18. Then being aggrieved, the petitioner had preferred an appeal before the Court of the learned Addl. Sessions Judge (FTC) No.4,

Kamrup, Guwahati which also came to be dismissed vide judgment and order, dated 29.03.2008, in Criminal Appeal No.39/2006, where by the learned appellate court had affirmed the judgment and order, dated 31.05.2006, passed by the learned trial court in Complaint Case No. 3508^C/1999.

19. And having carefully gone through the impugned judgments of both the learned court below, with the aid of all circumspection at our command, this court is unable to find out any illegality or infirmity in the impugned judgments requiring any interference of this court. The issues, raised in this petition, were also raised before the learned Courts below and both the learned Courts below had elaborately dealt with the same with cogent reasons. The petitioner has failed to show from the record any infirmity and illegality so as to invoke the revisional jurisdiction of this Court.

20. I have considered the submission of Mr. Sarma, the learned counsel for the petitioner, in respect of enhancing the fine amount, instead of the substantive sentence so imposed upon the petitioner. It appears that now the petitioner is 60 years old. Besides, he has been suffering from ailment of heart and pacemaker was also implanted upon him. Further, it appears that the occurrence took place on 15.07.1999. The sword of Damocles is hanging over his head for more than 23 years.

21. In this context it is also worth mentioning that it is a matter of record that the PFA Act stands repealed vide Notification No. P15025/41/2011DFQC, dated 4th August, 2011 with effect from 05.08.2011 and Food Safety and Security Act has come into being.

And under section 51 and 52 of FSS Act, 'misbranding' is now punishable only with the penalty of fine, which may be extended to Rupees Three Lacs. The punishment of imprisonment has been done away with. It is to be noted here that the learned Court had impose minimum of sentence of six months rigorous imprisonment as prescribed under Section 16(1)(a)(i) of the PFA Act. Whether awarding of sentence, less than the minimum prescribed under the PFA Act is permissible or not, came up for consideration of Hon'ble Supreme Court in the case of **Nemi Chand v. State of Rajasthan**, reported in **(2018) 17 SCC 448**. In the said case, Hon'ble Supreme Court has dealt with the issue as under:-

3. It is not in dispute that the charge against the appellant was only of sub-standardisation of goods. Mr. Sushil Kumar Jain, learned Senior Counsel appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by Central Amendment Act 34 of 1976 whereby Section 16-A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in *T. Barai v. Henry Ah Hoe* (1983) 1 SCC 177, wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held as under:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might

have been inflicted under the law in force at the time of the commission of the offence. It is not quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from *Craies on Statute Law*, 7th Edn., at pp. 388-89:

'A retrospective statute is different from an ex post facto statute. "Every ex post facto law..." said Chase, J., in the American case of *Calderv. Bull* 1 L Ed 648 : 3 US 386 (1798)]

"must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But *I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction....* There is a great and apparent difference between making an unlawful act lawful and the

making an innocent action criminal and punishing it as a crime.” (L Ed p. 650)”

(emphasis in original)

4. From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs 50,000 which shall be deposited within two months with the trial court. On deposit of the aforesaid amount, the bail bonds furnished by the appellant shall be discharged.

22. Thus, applying the said proposition of law to the given facts and circumstances of the case in hand, as discussed herein above, this court finds substance in the submission of Mr. Sarma, learned counsel for the petitioner. In the given back ground of the case and also in view of repealing of the PFA Act and replaced by new Act i.e. FSS Act, where the punishment prescribed for misbranding is only fine, which may extend to rupees three lakhs, this court is of the considered opinion that ends of justice would be meted out if the substantive sentence of six months, so handed down by the learned court below is modified/set aside, and the fine amount is enhanced to Rs.50,000/- (Rupees Fifty Thousand) only, from Rs.1000/- (Rupees One Thousand).

23. In the result, I find this revision petition bereft of merit and accordingly, the same stands dismissed. However, the substantive sentence of six months, so handed down by the learned court below, is modified/set aside, and the fine amount, so imposed by the learned court below, i.e. Rs.1000/- (Rupees One Thousand) stands enhanced to Rs. 50,000/- (Rupees Fifty Thousand) only. In default of payment of fine, the petitioner has to suffer simple

imprisonment for two months. The fine amount shall be deposited before the learned court below within a period of one month from today.

24. The Registry shall send down the record of the learned court below, forthwith, with a copy of the judgment of this court. The parties have to bear their own cost.

J U D G E

Comparing Assistant